IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT MARTINSBURG

BANK OF CHARLES TOWN,

Plaintiff,

v. **CIVIL ACTION NO. 3:10-CV-00102-JPB**
(Removed from the Circuit Court of Jefferson County, No. 10-C-312)

ENCOMPASS INSURANCE,
ENCOMPASS INDEMNITY COMPANY,
MICHELLE GROSSMAN,
JOHN WILSON, AND JOHN OR JANE DOE,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' MOTION TO STAY DISCOVERY
PENDING RESOLUTION OF MOTION TO DISMISS

Pursuant to Federal Rule of Civil Procedure 26(c), Defendants Encompass Insurance Company and Encompass Indemnity Company respectfully submit this Memorandum of Law in Support of their Motion to stay discovery pending resolution of their motion to dismiss.

Plaintiff, Bank of Charles Town (Bank), filed the subject civil action seeking recovery for alleged water damage to real property (the Home) at 11 Seattle Slew Way, Martinsburg, West Virginia. Bank alleged that Defendants Encompass Indemnity Company and Encompass Insurance (sic) were liable under a policy of insurance insuring the Home which listed Bank as Mortgagee.

Encompass Insurance Company, improperly named as Encompass Insurance in Bank's Complaint, moved to dismiss the claims against it because "Encompass Insurance" does not exist and Encompass Insurance Company had no relationship to the policy fo insurance at issue.

Separately, Encompass Indemnity Company moved the Court to dismiss the claims against it because the Encompass Indemnity Company policyholders, the Palmers, did not have an insurable interest in the Home, and Bank had no insurable interest as Mortgagee on the date of the loss.

At the same time Plaintiff served the Complaint, Plaintiff also served discovery requests on all Defendant. In light, of the straightforward nature of Defendants' motions to dismiss, a stay of all discovery in this case pending resolution of the motions is appropriate. A favorable decision on the motions to dismiss will dispose of all of Plaintiff's claims and render Plaintiff's discovery requests moot.

ARGUMENT

I. A STAY OF ALL DISCOVERY PENDING RESOLUTION OF EACH ENCOMPASS DEFENDANTS' MOTIONS TO DISMISS IS WARRANTED

The Court has broad discretion to stay discovery pending the resolution of dispositive motions, including motions to dismiss. *In re Graphics Processing Units Antitrust Litig.,* No. C 06-07417, 2007 WL 2127577, at *2 (N.D. Cal. July 24, 2007); *Spencer Trask Software & Info. Servs., LLC v. Rpost Int'l Ltd.,* 206 F.R.D. 367, 368 (S.D.N.Y. 2002). When considering a motion to stay, courts typically balance, among other things, the interest of the plaintiff in proceeding expeditiously, the prejudice to the plaintiff of a delay, the burden of discovery on the defendants, and the strength of the dispositive motion. *See McLafferty v. Deutsche Lufthansa A.G.,* Civil Action No. 08-1706, 2008 WL 4612856, at *1-2 (E.D. Pa. Oct. 15, 2008); *Spencer,* 206 F.R.D. at 368; *Feldman v. Flood*, 178 F.R.D. 651, 652 (M.D. Fla. 1997). Each of these factors warrants a stay in this case.

First and foremost, Defendants' pending motions to dismiss raise significant doubts as to the merits of Plaintiff's claims, all of which turn on whether there was an insurable interest in the home under the policy.

Moreover, discovery is not necessary to enable Plaintiff to formulate its response to Defendants' motions to dismiss.

Because Plaintiff's discovery requests will be rendered moot if Defendants' motions to dismiss are granted, Defendants should not be required to invest the considerable amount of time and resources that would be required to respond to those requests. There is no basis on which such discovery is either necessary or justified.

CONCLUSION

For all of the foregoing reasons, Defendants respectfully request that the Court to stay all discovery pending resolution of Defendants' motion to dismiss.

ENCOMPASS INSURANCE,
ENCOMPASS INDEMNITY COMPANY,

By counsel,

/s/ Brent K. Kesner

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Plaintiff,

v.

**CIVIL ACTION NO. 3:10-CV-00102-JPB
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Jefferson County, No. 10-C-312)**

**ENCOMPASS INSURANCE,
ENCOMPASS INDEMNITY COMPANY,
MICHELLE GROSSMAN,
JOHN WILSON, AND JOHN OR JANE DOE,**

Defendants.

CERTIFICATE OF SERVICE

I, Brent K. Kesner, counsel for Encompass Insurance Company and Encompass Indemnity Company, do hereby certify that on the **2nd day of November, 2010**, I electronically filed the foregoing **MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO STAY DISCOVERY PENDING RESOLUTION OF MOTION TO DISMISS** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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